

REMARKS

Applicant initially notes with appreciation, the Examiner's indication in the Office Action that dependent Claims 18, 42 and 43 would be allowable if appropriately rewritten in independent form. In this regard, new independent Claim 47 includes limitations corresponding with dependent Claim 18, intervening dependent Claims 16 and 17, and independent Claim 1 (as previously presented), and is therefore believed to be in condition for allowance. Likewise, independent Claim 40 has been amended to include limitations corresponding with dependent Claims 42 and 43 and is therefore believed to be in condition for allowance.

Claims 1-4, 12, 15, 20-23, 25, 27, 28, 31, 32, 34, 36, 38, 40, 41 and 44-46 stand rejected under 35 U.S.C. § 102(b) and Claims 5-11, 13, 14, 16, 17, 19, 24, 26, 29, 30, 33, 35, 37 and 39 stand rejected under 35 U.S.C. § 103(a). More particularly, the Examiner contends that independent Claims 1 and 31 are anticipated by United States Patent No. 6,429,936 to Scaduto. Applicant submits that independent Claims 1 and 31 are not anticipated by Scaduto, and such claims are not obvious based on Scaduto alone or in combination with other references of record. Therefore, Applicant respectfully requests that the rejections of independent Claims 1 and 31 and all claims depending therefrom be withdrawn.

Independent Claim 1 is directed to an infrared camera system comprising: (1) an infrared illumination source operable to transmit infrared optical energy in the direction of a subject when an ambient infrared light level is determined to be insufficient; (2) a lens configured to collect optical energy conveyed from the subject; (3) a filter providing a plurality of pass bands associated with different center wavelengths within an infrared portion of the electromagnetic spectrum, the filter being operable to pass filter optical energy collected by the lens in accordance with any selected one of its plurality of pass bands; (4) an optical detector operable to generate an electrical signal representing an image of the subject in response to optical energy collected by the lens, pass filtered by the filter in accordance with a desired pass band selectable from among the plurality of pass bands, and subsequently incident on the optical detector; and (5) a control device operable to select the desired pass band from among the plurality of pass bands provided by the filter.

Independent Claim 31 is directed to a method of obtaining an infrared image of a subject, the method comprising the steps of: (1) measuring an ambient infrared light level; (2) operating an infrared illumination source to transmit infrared optical energy in the direction of the subject

when the measured ambient infrared light level is insufficient; (3) collecting optical energy conveyed from the subject; (4) selecting a desired one of a plurality of pass bands associated with a filter, wherein each pass band has a center wavelength associated therewith, the center wavelengths being within an infrared portion of the electromagnetic spectrum; (5) filtering the collected optical energy in accordance with the selected pass band of the filter; and (6) generating an electrical signal representing an image of the subject from the filtered optical energy.

In contrast with Claims 1 and 31, Fig. 6 of Scaduto depicts a fluorescent microscope in which filtered light illuminates a sample under observation. Scaduto does not disclose, *inter alia*, an infrared illumination source that illuminates the subject with infrared optical energy. In rejecting dependent Claims 24 and 33 (as previously presented), the Examiner contended that United States Patent No. 5,051,768 to Harrison discloses an illumination source operable to transmit optical energy in the direction of the subject when the measured ambient infrared light level is insufficient and that it would be obvious to modify Scaduto in view of Harrison to have an infrared illumination source operable to transmit infrared optical energy in the direction of the subject when the ambient infrared light level is insufficient. Applicant respectfully disagrees that it would be obvious for one skilled in the art to modify Scaduto in such fashion.

Scaduto discloses that the filtered light that illuminates the sample under observation is provided by a light source 10 that produces a broad band spectrum of light which passes through an IR absorbing filter 30 where light (and corresponding heat) from the infrared is filtered, then through a focusing lens 40 where it enters the excitation assembly 100 of the fluorescent microscope. Scaduto specifically notes: "At this point the light is still comprised of a broad band spectrum of wavelengths, with only wavelengths corresponding to the infrared spectrum having been removed by filter 30." (see Scaduto Col. 6, lines 9-24). Thus, Scaduto teaches removing IR light from the light that illuminates the sample under observation. Therefore, Scaduto actually teaches away from the using infrared light to illuminate a subject. For this reason, one skilled in the art would not combine Harrison or any other reference disclosing an infrared illumination source that is used to provide infrared illumination of a subject with Scaduto to achieve the invention of Claims 1 and 31.

Conclusion:

In view of the foregoing, Applicant respectfully submits that the rejections of independent Claims 1, 31 and 40 should be withdrawn, and since independent Claims 1, 31, 40 and 47 are in condition for allowance, there is no need to separately address the patentability of the claims depending directly or indirectly therefrom. In this regard, Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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